

Drug Policy Task Force

Date: January 20, 2010 Time: 1:00 – 5:00 p.m.

Attendees:

Chairs

Grayson Robinson/Arapahoe County Sheriff – Chair

Task Force Members

Bill Kilpatrick/Chief of Golden Police Department

Maureen Cain/Colorado Criminal Defense Bar

Brian Connors/Public defender

Tom Raynes/Deputy Attorney General's Office

Mark Randall for Miles Madorin/Deputy District Attorney, 1st Judicial District

Christie Donner/Executive Director Colorado Criminal Justice Reform Coalition

Pat Steadman/Colorado State Senator, 31st District

Dan Rubinstein/Chief Deputy D.A., 21st Judicial District (via phone)

Mark Hurlbert/District Attorney, 5th Judicial District

Shane Bahr/ State PSC Coordinator/ Colorado Judicial Department

Absent:

Dean Conder/Chairman, Juvenile Parole Board – Vice-Chair

Don Quick/District Attorney, 17th Judicial District

Reo Leslie/Colorado School for Family Therapy

Regina Huerter/Executive Director, Denver Crime Prevention and Control Commission

Greg Long/Chief Deputy District Attorney, 2nd Judicial District

Carmelita Muniz/Colorado Association of Alcohol and Drug Service Providers

Evie Hudak/Colorado State Senator, 19th District

Kathleen McGuire/Public defender

Nancy Feldman/Manager Victims of Crime Unit, Division of Criminal Justice

Doyle Forrestal/Colorado Behavioral Health Care Council

Paul Thompson/Peer 1

Jim Welton/Inspector General, Dept. of Corrections

Sean McAllister/Defense attorney

Mark Waller/State Representative

Guests:

Claire Levy/State Representative

Steve Hooper/Department of Revenue

Issue/Topic:	Discussion:
Introductions	Grayson Robinson called the meeting to order at 1:09 p.m. and reviewed the day's agenda.

Issue/Topic:	Discussion:
<p data-bbox="224 390 407 489">Section 7 DUI Sentencing Action</p> <p data-bbox="115 533 516 596">Forward approved statements to the Commission.</p>	<p data-bbox="561 390 1182 420">7a: No changes to penalties for the 1st DUI offense.</p> <p data-bbox="561 426 1495 489">Tom Raynes made the motion to approve 7a. Brian Connors made the second. Vote: Passed unanimously</p> <p data-bbox="561 533 1503 596">7h: Work Release is allowed for existing job, education and treatment for the first 10 days on the second offense.</p> <p data-bbox="561 602 1516 810">Discussion: Maureen made a motion to approve 7h. Brian Connors seconded the motion. Claire Levy asked if the task force wants the clarifying language in the bill when work release would be allowed. Are we including the education as a structured program? Yes. We should make it clear that this is effective for the first ten days. The remaining 20 days of the 30-day sentence is up to the judge. Vote: Yes=8 No=0.</p> <p data-bbox="561 854 1523 951">Maureen Cain asked to amend 7h by adding the wording "on the second offense. Brian Connors seconded the amendment. Vote on amendment: Yes=9 No=0</p> <p data-bbox="561 995 1528 1094">7k: If a 2nd DUI offense is committed on or before 5 years of the date of conviction offense for a prior DUI offense, then no alternative sentence shall be imposed (e.g., in-home detention).</p> <p data-bbox="561 1100 1523 1413">Discussion: Tom Raynes made a motion to accept 7k. Brian Connors seconded the motion. Are you using the date of conviction as the second offense, or the date of offense? Mark Randall said the date of offense is a concrete date that is not open to the variables of court dates. If you use the terminology "of the date of offense," a person could be arrested within a three-week time frame and the person would be subject to the 2nd offense conditions. Change the wording from "date of conviction" to "date of offense". The term "no alternative sentence" means no in-home detentions. Vote: Yes=9 No=0</p> <p data-bbox="561 1457 1474 1520">7l: However, once the minimum of 10 consecutive days is served, the court may impose alternatives to incarceration sentences.</p> <p data-bbox="561 1526 1523 1808">Discussion: Christie Donner made the motion to approve 7l. Brian Connors seconded the motion. This is for 10 days in a row. Dan Rubenstein said that this may result in fewer pleas. There will be times where the defendant would rather have the 10 days straight jail time as opposed to being allowed to work during the week and stay in jail on the weekends. The 10 days consecutive reflects the intent of the Commission. There are many counties that don't have the weekender program. Can we change the word "incarceration" to "sentence"? Vote: Yes=9 No=0</p> <p data-bbox="561 1852 1458 1915">7b: For all 2nd DUI offenses, the court must impose an initial minimum jail sentence of 10 consecutive days, up to one year.</p> <p data-bbox="561 1921 1503 1984">Discussion: The Sheriffs' Association met prior to the January Commission date and unanimously approved this point. Tom Raynes moved to approve 7b. Dan</p>

Rubenstein seconded the motion. Maureen Cain would like it to read “minimum jail sentence”. Wording changes to “initial minimum jail sentence.”

Vote: Yes=9 No=0

7c: At least 10 days must be served. This minimum sentence shall not be suspended and the offender is not eligible for earned time, good time, and or trustee status.

You do not get earned time for this 10-day period. This is understood. Tom Raynes moved to approve 7c. Dan Rubenstein wants it to amend it to read “or trustee status” as opposed to “and trustee status”. Dan Rubenstein seconded the motion.

Vote: Yes=9 No=0

7d: Credit for time served while in custody for the offense prior to conviction is mandatory.

Discussion: Maureen Cain moved to approve 7d. Brian Connors seconded the motion. Dan Rubenstein asked if the credit for time served in custody would be part of the 10-day consecutive sentence. If someone serves 2 days in jail at the beginning, and the judge wanted to give a 10 day sentence, the judge couldn’t because the 10 days were not consecutive. Pre-trial confinement will be considered as part of the 10 days consecutive sentence.

Vote: Yes=9 No=0

7e: A mandatory probation period of 2 years and 1 year of jail suspended must follow the initial jail sentence.

Discussion: When we say “DUI” do we mean any drug or alcohol offense? This would include DWAls. Why do we need a mandatory 2 years for probation? For treatment time. It also makes it consistent across jurisdictional lines. Probation doesn’t start until the initial jail sentence has been completed. How does this affect probation? It would have some effect, but it would not be great. If the court sentences an offender to 30 days, the first 10 days must be in jail. The remaining 20 days may be served as in-home detention or use of an ankle bracelet. After the 30 days is served, the two years probation begins. If the offender violates probation, the court has the ability to impose more jail time. We are talking about supervised probation which will be voted on in provisions 7y through 7ee. The intent of the Commission is not to have an offender perform the initial jail sentence and not get treatment. The terms and conditions of probation can vary and some offenders feel that probation never ends. There is nothing in these that allows for judicial discretion. Tom Raynes moved to approve 7e as written. Dan Rubenstein seconded the motion.

Vote: Yes=5 No=4

7f: Any time served during the initial sentence to jail shall not be credited against the 1 year of jail suspended as a condition of probation.

Dan Rubenstein moved to approve 7f. Tom Raynes seconded the motion.

Vote: Yes=6 No=3

7g: Imposition of jail sentences for violations of probation may be done incrementally, but cannot exceed an aggregate of 1 year.

Discussion: Dan Rubenstein moved to approve 7g. Tom Raynes seconded the motion. Maureen Cain asked to amend 7g to have the judge consider the severity of the violation and cannot exceed the one year. Dan Rubenstein would like to add that the court shall consider the severity of the violation when

determining the sanction.

Vote: Yes=9 No=0

7i: Between 48 and 120 hours of public service is required, at judicial discretion.

Discussion: What does "judicial discretion" mean? The intent is that public service would be mandatory but the amount within the range would be at the discretion of the court. Is there any data that shows that public service helps reduce recidivism? No, but it could be an additional sentence available to the court. Dan Rubenstein made a motion to approve 7i with striking the wording "at judicial discretion." Tom Raynes seconded the motion.

Vote: Yes=9 No=0

7j: A fine of \$600 - \$1500 is required. However, this can be waived or suspended at judicial discretion.

Discussion: Dan Rubenstein moved to approve 7j with a change to say the fine can be waived or suspended at judicial discretion. Second by Shane Bahr

Vote: Yes=9 No=0

7m: If a second DUI offense is committed beyond 5 years of the date of conviction offense for a prior DUI offense, then the offender shall be sentenced to jail or an alternative sentence may be imposed (e.g., in-home detention.)

Discussion: Dan Rubenstein moved to approve 7m with the change of "date of conviction" to date of offense." There also should be a reference to a minimum of 10 days up to a year. It would not be a mandatory consecutive sentence. Tom Raynes seconded the motion.

Vote: Yes=9 No=0

7n: For all 3rd and subsequent DUI offenses the court must impose an initial minimum jail sentence of 60 consecutive days, up to one year.

Discussion: Continue the wording of "consecutive days" and "initial minimum" when discussing the mandatory initial jail sentence. What about drug courts? Shane Bahr would like it to be at the discretion of the courts with appropriate supervision. We need a minimum jail sentence even if we use a DUI court. Tom Raynes moved to accept 7n as written. Mark Hurlbert seconded the motion. At what point do we get to tell the offender that they are not going to get out of jail - if you are going to lose your job, you lose your job. Do you want it to be a third offense within a 5 year period? To be classified as a habitual traffic offender, there must be three convictions within a 7 year period. The vote will be on the motion to approve 7n as written.

Vote: Yes=8 No=1

AMENDED 7n: For all 3rd and subsequent DUI offenses committed within 7 years, the court must impose an initial minimum jail sentence of 60 consecutive days, with no sentencing alternatives.

Discussion: Tom Raynes moved to amend 7n with the addition of the 7 year time period and not allowing any sentencing alternatives. Dan Rubenstein seconded the motion. During the 60 days, the offender would be participating in treatment.

Vote: Yes=7 No=2

7o: At least 60 days must be served. This minimum sentence shall not be suspended and the offender is not eligible for earned time, good time and trustee status.

Discussion: Maureen Cain made a motion to approve 7o as written. Christie Donner seconded the motion.

Vote: Yes=9 No=0

7p: Credit for time served while in custody for the offense prior to conviction is mandatory.

Discussion: Maureen Cain moved to approve 7p. Seconded by Brian Connor.

Vote: Yes=9 No=0

7q: A mandatory probation period of 2 years and 1 year of jail suspended must follow the initial jail sentence.

Discussion: Tom Raynes moved to accept 7q. Mark Hurlbert seconded the motion.

Vote: Yes=6 No=3

AMENDED 7q: A mandatory probation period of 2 years and 1 year of jail suspended *are in addition to* ~~must follow~~ the initial jail sentence.

Discussion: Dan Rubinstein made the motion to add the wording "in addition to" in place of the wording "must follow" the initial jail sentence. Tom Raynes seconded the motion.

Vote: Yes=6 No=3

7r: Any time served during the initial sentence to jail shall not be credited against the 1 year of jail suspended as a condition of probation.

Discussion: Tom Raynes moved to approve. Seconded by Shane Bahr.

Vote: Yes=6 No=3

7s: Imposition of jail sentences (*or other sanctions*) for violations of probation may be done incrementally, but cannot exceed an aggregate of 1 year. *The court shall consider the severity of the violations in any sentence.*

Discussion: Tom Raynes moved to approve 7s. Dan Rubenstein seconded the motion with the addition of "or other sanctions" and the addition of the sentence, "The court shall consider the severity of the violations in any sentence."

Vote: Yes=9 No=0

7t: Work release is allowed for existing job, education and treatment.

Discussion: Maureen Cain moved to approve 7t. Dan Rubenstein seconded the motion and would like court ordered treatment.

Vote: Yes=9 No=1

7u: No alternative sentence shall be imposed (e.g., in-home detention).

Discussion: Tom Raynes moved to approve 7u. Christie Donner seconded.

Vote: Yes=9 No=0

7v: However, once the minimum of *consecutive* 60 days is served the court may impose alternatives to incarceration.

Discussion: Tom Raynes moved to approve 7v. Maureen Cain seconded.

Vote: Yes=9 No=0

7w: Between 48 and 120 hours of public service is required, at judicial discretion.

Discussion: Dan Rubenstein moved to approve 7w with the striking the words "at judicial discretion. Tom Raynes seconded the motion.

Vote: Yes=9 No=0

7x: A fine of \$600 - \$1500 is required. However, this can be waived or suspended at judicial discretion.

Discussion: Dan Rubenstein moved to approve 7x with the addition of the words "or suspended." Mark Hurlbert seconded the motion.

Vote: Yes=9 No=0

7y: For any DUI offense, additional sanctions may be imposed as conditions of probation. This includes, but is not limited to, wearing a continuous alcohol monitoring device, in-home detention during probation, and/or mandatory ignition interlock device even while license is under suspension.

Discussion: If our recommendation specifies the use of interlock or other sanctions for "second and subsequent offenses" a judge may feel that these sanctions are not to be used for first time offenders. The courts are currently allowed to do this. If we put this in, we are taking away the courts ability to use these sanctions. We want to encourage the use of interlock for any offense. It has a 65% success rate. Can you put in the bill's preamble a statement on the use of interlock? The concern of public defenders is that their clients cannot afford the installation of interlock. The matter died for lack of a motion.

Later discussion: Do we want to have the statute state that the court has the authority to impose the interlock device? Dan Rubenstein moved that this concept be put in the preamble. Seconded by Mark Hurlbert.

Vote: Yes=6 No=0

7z: A mandatory minimum of two years probation for second and subsequent offenses must be imposed as a separate component of the sentence. ~~This probationary period will commence immediately upon the completion of the initial jail sentence.~~ The mandatory minimum of 2 years probation should start immediately upon commencement of the sentence. The judge may impose an additional two years of probation, if necessary, for further monitoring and treatment.

Discussion: Tom Raynes made a motion to approve 7z. Mark Hurlbert seconded the motion. If someone is on probation, the individual has the ability to earn funds to pay for fines, etc. Why would we want to start probation after a mandatory sentence? If you run probation concurrent to the 60 day mandatory jail sentence, it would have a fiscal note for probation. Tom Raynes withdrew his motion. Dan Rubenstein moved to approve 7z with the addition of a second sentence. The mandatory minimum of 2 years probation should start immediately upon commencement of the sentence. Tom Raynes seconded.

Vote: Yes=8 No=1

7aa: In addition to the initial jail sentence the court shall impose and suspend 1 year of jail as a condition of probation.

Discussion: Dan Rubenstein moves to accept 7aa as written. Tom Raynes seconded the motion.

Vote: Yes=6 No=3

7bb: The initial sentence to jail is not credited against probationary jail time.

Discussion: Dan Rubenstein moved to accept 7bb. Tom Raynes seconded the motion.

Vote: Yes=6 No=3

7cc: Alcohol and/or drug treatment *ordered must be done* by an approved provider must be a condition of probation.

Discussion: Dan Rubenstein moved to approve 7cc. Seconded by Mark Hurlbert. Treatment should be assessed by a professional and performed by an approved provider. Dan Rubenstein moved to change the wording to, "Alcohol and drug treatment, if ordered must be by an ADAD approved provider." Mark Hurlbert second stands. We should include alcohol and or drug education as well. Is the current statute adequate? Yes. Dan Rubenstein withdrew his previous motions and moved to change 7cc to read: "Any alcohol and/or drug treatment ordered must be done by an approved provider". Mark Hurlbert's second continues.

Vote: Yes = 9 No= 0

7dd: Appropriate court ordered treatment must be completed before the offender may be released from probation. The court may mandate that this treatment begin during work release.

Discussion: Tom Raynes moved to approve 7dd. Dan Rubenstein seconded the motion. Probation is limited to 4 years under this statement. What this means is that someone would not be granted early release from probation if they had not completed treatment.

Vote: Yes=8 No=1

7ee: The prosecution, defendant, defendant's counsel, or probation officer may petition the court for early termination of probation by demonstrating compliance with all terms and conditions of probation, ~~successful~~ substantial completion of approved alcohol and/or drug treatment, and that the termination of probation will not endanger public safety.

Discussion: Dan Rubenstein moved to accept 7ee. Brian Connors seconded motion. Maureen asked to change the word "successful completion" to "substantial completion."

Vote: Yes=9 No=0

Issue/Topic:

Section 1
Where the money is going
Action

Discussion:

1a: Increase the minimum alcohol surcharge.

Discussion: Shane Bahr moved to approve 1a. Mark Hurlbert seconded the motion.

Vote: Unanimous approval.

1b: Savings reallocated to evidence-based treatment programs.

Dan Rubinstein motioned to reaffirm the acceptance of this recommendation. Mark Hurlbert seconded.

Vote: Yes = 9 No = 0

1c: Reallocation of surcharge funds.

Discussion: Withdrawn.

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Issue/Topic:	Discussion:
<p>Section 4 Study DUI Courts Action</p> <p>Forward approved statements to the Commission.</p>	<p>4a: Training on evidence-based DUI sentencing practices. Discussion: Tom Raynes moved to reaffirm the task force's support of 4a. Shane Bahr seconded the motion. Vote: Yes=7 No=0</p> <p>4b: Study Colorado DUI courts. Discussion: Dan Rubenstein moved to reaffirm the task force's support of 4b. Mark Hurlbert seconded the motion. Vote: Yes=7 No=0</p> <p>4c: If justified, expand DUI courts statewide. Discussion: Dan Rubenstein moved to reaffirm 4c. Shane Bahr seconded the motion. Vote: Yes=7 No=0</p> <p>4d: Allow offender to follow DUI court program after minimum jail time is served. Discussion: Rep. Levy asked that this statement be stricken.</p>

Issue/Topic:	Discussion:
<p>Vote on Package as a whole Action</p> <p>Forward approved statements to the Commission.</p>	<p>Dan Rubenstein moved to accept the body of work done by the drug policy working group. Shane Bahr seconded the motion. Vote: Yes=7 No=0</p>

Issue/Topic:	Discussion:
<p>Section 2 Treatment While Incarcerated Action</p>	<p>2a: Treatment conditions. Discussion: This has already been addressed, therefore this section was withdrawn.</p> <p>2b. Treatment received while incarcerated to be transferable. Discussion: Mark Hurlbert made the motion to reaffirm 2b. Second by Tom Raynes. Vote: Yes = 7 No = 0</p>

Issue/Topic:	Discussion:
<p>Section 3 Information for Peace Officers Action</p>	<p>3a: Information available to peace officers. Discussion: Dan Rubenstein moved to reaffirm 3a. Tom Raynes seconded the motion. Vote: Yes = 7 No = 0</p>

Issue/Topic:	Discussion:
<p>Section 5 Bond Statutes for repeat DUI offenders</p>	<p>5a: Modify bond statutes for defendants accused of 3rd and subsequent alcohol and drug related driving offenses.</p>

Action	Discussion: Tom Raynes moved to reaffirm 5a. Mark Hurlbert seconded the motion. Vote: Yes=6 No=1
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Issue/Topic: Section 6 Habitual Traffic Offenders Action	Discussion: 6a: Eliminate some non-alcohol/drug driving offenses as prerequisites for HTO's and eliminate mandatory jail sentences for non-alcohol offenses. Discussion: Dan Rubenstein moved to reaffirm 6a. Mark Hurlbert seconded the motion. Vote: Yes = 7 No = 0
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Issue/Topic: Other Action	Discussion: Discussion: We need to have some level of funding earmarked or set aside for public education on the work that has been done. Mark Hurlbert moved that we recommend to the CCJJ that an appropriate education campaign be funded to educate the public on the DUI penalties. Tom Raynes seconded the motion Vote: Yes=6 No=1
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The Drug Policy Task force will meet again. A proposed meeting schedule will be drafted and sent out in a few weeks.

A final draft of these approved recommendations, which will be voted on by the full CCJJ on February 5, are addressed in the February memo to the legislature.

The meeting adjourned at 4:49